

**UNITED STATES DISTRICT COURT**  
**DISTRICT OF NEVADA**

ERNEST HICKS, et al.,

Plaintiffs,

vs.

DAIRYLAND INSURANCE COMPANY, et al.,

Defendants.

Case No. 2:08-cv-01687-RCJ-PAL

**ORDER**

(Mot. For JD Exam - Dkt. #97)

This matter is before the court on Defendants' Motion for Court to Conduct Judgment Debtor Examination (Dkt. #97) filed February 17, 2012. The court has reviewed the Motion, Plaintiffs' Response (Dkt. #98), and Defendants' Reply (Dkt. #99).

The district judge entered summary judgment in favor of the Defendants and awarded costs against the Plaintiffs in the amount of \$21,151.90. Plaintiffs appealed and the Ninth Circuit affirmed and awarded Defendants appellate costs in the amount of \$103.80. Plaintiffs' petition for a writ of certiorari to the United States Supreme Court was denied. Counsel for Defendants communicated with counsel for Plaintiffs in letters dated September 19, 2011, and January 25, 2012, to address the payment of these costs. The January 25, 2012, letter also requested dates to take a judgment debtor examination of Ronald Kleckley. The motion represents counsel for Plaintiffs did not respond and the Defendants therefore seek an order requiring that Plaintiff Ronald Kleckley appear for a judgment debtor examination. Defendants do not seek the judgment debtor examination of Plaintiff Hicks, as he is currently incarcerated.

Plaintiffs oppose the motion representing that Kleckley resides in Michigan. Pursuant to NRS 21.270, a judgment debtor may not be compelled to appear for a judgment debtor exam outside the county in which the judgment debtor resides.

1 Defendants reply that Kleckley's "naked" unsupported statement that he lives in Michigan is  
2 insufficient to support his opposition. Plaintiff did not support the motion with an affidavit, declaration  
3 or any documents showing he resides in Michigan. During his April 10, 2009, deposition, Kleckley  
4 testified he had lived in Las Vegas, Nevada, for almost 10 years. Defendants' research indicates that as  
5 of March 1, 2012, Nevada Department of Motor Vehicle records show that he possesses a valid  
6 Nevada Driver's License which lists an address at 4709 Terra Rosa Drive in Las Vegas, Nevada, and  
7 that a 1994 Ford Van is currently registered in the State of Nevada. The vehicle was registered  
8 September 8, 2011, at the same physical address was provided by Kleckley at his deposition. Finally,  
9 Kleckley's Facebook page was downloaded March 1, 2012, and reflects he lives in Las Vegas, Nevada.  
10 Under these circumstances, the Defendants argue the court should grant the motion for a judgment  
11 debtor examination. In the alternative, counsel for Defendants request that the court compel Kleckley  
12 to provide documentation to the court that he actually resides "elsewhere within the legal meaning of  
13 the word 'reside'".

14 Having reviewed and considered the moving and responsive papers, the court will deny the  
15 Motion for Judgment Debtor Examination without prejudice. However, given the documentary  
16 evidence the Defendants have provided, the court will require Plaintiff Kleckley to submit an affidavit  
17 and documentary support for the statement made in opposition to the motion that he resides in  
18 Michigan or elsewhere. The affidavit or declaration shall be under oath and notarized, shall provide  
19 Kleckley's current address, the length of time he has resided at the address, and any documentary proof  
20 that he resides outside the state such as a lease agreement or utility bill.

21 **IT IS ORDERED** that:

- 22 1. Defendant's Motion for Court to Conduct Judgment Debtor Examination (Dkt. #97) is  
23 **DENIED without prejudice.**

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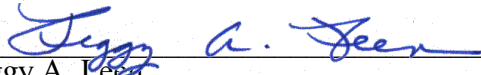
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2. Plaintiff Kleckley shall have until **March 16, 2012**, to file and serve an affidavit or declaration sworn under penalty of perjury with documentary support for his statement that he currently resides outside the state.

Dated this 29<sup>th</sup> day of February, 2012.

  
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Peggy A. Leen  
United States Magistrate Judge